



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 8TH DAY OF JANUARY 2026 / 18TH POUSHA, 1947CRL.L.P. NO. 366 OF 2025 (FILING NO.)

AGAINST THE JUDGMENT DATED 30.07.2025 IN Crl.A NO.78 OF 2022
OF SESSIONS COURT, KALPETTA, WAYANAD ARISING OUT OF THE JUDGMENT
DATED 21.07.2022 IN CC NO.678 OF 2017 OF JUDICIAL MAGISTRATE OF
FIRST CLASS - I, SULTHAN BATHERY

PETITIONER/APPELLANT/DE FACTO COMPLAINANT:

GOPALA KRISHNAN
AGED 56 YEARS, S/O. MADHAVAN CHETTY,
PUTHIYANI HOUSE,
KIDANGANAD, VADAKKANAD,
WAYANAD DISTRICT, PIN - 673591

BY ADVS.
SRI.T.P.PRADEEP
SRI.P.K.SATHEES KUMAR
SRI.R.K.PRASANTH
SMT.MINIKUMARY M.V.
SHRI.JIJO JOSEPH

RESPONDENTS/RESPONDENTS/STATE & ACCUSED:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA,
ERNAKULAM, PIN - 682031

2 BIJU JOSEPH
AGED ABOUT 45 YEARS, S/O.P.M JOSEPH,
PARATHOTHAYIL HOUSE,
AMALA NAGAR, CHERUKATTOOR,
WAYANAD, PIN - 670721



2026:KER:811

3 **SHIMNA C.P**
AGED ABOUT 38 YEARS, W/O BIJU JOSEPH,
CHERUPARAMBIL HOUSE,
MOODAKOLI, IRULAM,
WAYANAD, PIN - 673592

BY SMT.SREEJA V., PUBLIC PROSECUTOR

**THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON
11.12.2025, THE COURT ON 08.01.2026 PASSED THE FOLLOWING:**

**"C.R."****BECHU KURIAN THOMAS, J.**

**Unnumbered Crl.L.P No. of 2025
(Filing No.366 of 2025)**

Dated this the 8th day of January, 2026

ORDER

A defacto complainant is before this Court, seeking leave to prefer another appeal against the judgment of a Sessions Court rendered in an appeal filed by him, challenging the acquittal of accused by the trial court. The Registry of this Court noted a defect that the petitioner had already preferred an appeal before the Sessions Court against the judgment of acquittal of the trial court and hence a second criminal appeal by the same appellant is not maintainable. Petitioner questioned the correctness of the said defect, and hence the matter was placed before this Court, for consideration.

2. This criminal leave petition has been filed by the defacto complainant in C.C. No.678 of 2017 on the files of the Judicial First Class Magistrates Court, Sulthan Bathery under section 419(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'the BNSS'), seeking leave to prefer an appeal against the concurrent findings of acquittal of the accused for the offences alleged under sections 420 and 415 r/w section 34 of IPC, sections 17 and 18 of the Kerala Money Lenders Act, 1958 and section 4 r/w section 76(1) of the Chit Funds Act, 1982. The appeal filed by the petitioner herein, as Crl. Appeal No.78 of 2022 on the files of the Sessions Court, Kalpetta, was dismissed thereby affirming the judgment



of acquittal of the trial court. Thus, after the trial court acquitted the accused, the defacto complainant preferred an appeal which ended in dismissal and through this leave petition he seeks permission to prefer yet another appeal. Since the learned counsel for the petitioner insisted that his contentions be heard and considering the importance of the issue, this Court appointed Adv. Krishnapriya Sreekumar, as Amicus Curiae to assist the court in this matter.

3. I have heard Sri. T. P. Pradeep, the learned counsel for the petitioner as well as Adv. Krishnapriya Sreekumar, the learned Amicus Curiae, the latter of whom filed a detailed note as well, in support of her submissions.

4. Sri. T P. Pradeep the learned counsel for the petitioner on the other hand, submitted that section 413 of the BNSS enables a complainant as a victim to prefer an appeal against any order passed by the court acquitting an accused and is not confined only to an appeal against the order of acquittal passed by the court of first instance. The learned Counsel relied upon section 419(4) of the BNSS and submitted that the terms 'if such an order of acquittal' employed in the said provision when read along with section 413 of the BNSS, it will be evident that the right of appeal for a victim will accrue against any order of acquittal. The learned counsel also relied upon the decision in **Ganesh Rao K.H. v. Gopal H** (2010 Crl.LJ 2687).

5. Adv. Krishnapriya Sreekumar, the learned Amicus Curiae submitted that the appeal is a substantive right borne out from the principle that a person aggrieved by a judicial determination must have an avenue to seek reconsideration by a superior forum and that there is no inherent right to appeal, as it is one



conferred by a statute which cannot be expanded through creative interpretations. Inviting the attention of this Court to the provisions of sections 413, 415, 419 and section 434 of the BNSS, it was submitted that, once an appeal is preferred against a judgment of acquittal, another appeal cannot be entertained, at the instance of the same person. The learned Amicus Curiae referred to the decision of the Supreme Court in **Asian Paints Limited v. Ram Babu and Another** (AIR 2025 SC 3322) and submitted that the right of appeal accrues to a victim from the moment the court acquits an accused and the right of the victim can only be for preferring an appeal to the court that ordinarily entertains an appeal under the proviso to section 413 of the BNSS. The learned Amicus Curiae, further relied upon the decision in **Mallikarjun Kodagali (dead) represented through legal representatives v. State of Karnataka and Others** [(2019) 2 SCC 752] and submitted that section 413 of the BNSS creates an independent statutory right of appeal while section 419 of the BNSS deals with the grant of leave by the High Court.

6. The above contentions have given rise to the following question which require to be answered:

(i) Whether after filing an appeal under section 413 of the BNSS before the Sessions Court, can another appeal be preferred by the same appellant under section 419(4) of the BNSS, against the order confirming the acquittal.

7. The term 'victim' has been defined in section 2(1)(y) of the BNSS as a person who has suffered any loss or injury caused by reason of the act or omission of the accused person. Courts have interpreted the term 'victim' broadly, to even include a person who has suffered any type of injury including financial, property



damage, bodily harm, or even a violation of a legal right and includes even the legal heir as well. (reference to the decision in **Celestium Financial (M/s) v. A. Gunasekaran Etc.** [2025 INSC 804] is relevant in this context).

8. Adverting to the facts of the case on hand, there can be no quarrel that the petitioner is a victim and is entitled to prefer an appeal. However, there is no inherent right of appeal for any person, since such a right is a creation of the statute. Once a right of appeal is created by the statute, it becomes a substantive right. Section 413 of the BNSS itself stipulates that no appeal shall lie from any judgment or order of a criminal court, except as provided for by the Sanhita or by any other law for the time being in force. Section 415 of the BNSS confers a right to an accused to prefer an appeal against a judgment or order of conviction, while section 418 of the BNSS vests a right upon the State Government to direct the public prosecutor to file an appeal against any order on the ground of inadequacy of sentence and section 419 of the BNSS provides for an appeal to be filed against the judgment and orders of acquittal by a criminal court. There are other provisions also, in Chapter XXIX of Cr.P.C, that deal with appeals, which may not be relevant for the present case. Suffice to say, until the proviso to the erstwhile section 372 Cr.P.C was inserted in 2009, a victim of a crime did not have a right of appeal. The right of appeal being a creation of the statute, the forum and the procedure for such an appeal, if provided for, must necessarily be also governed by the statute.

9. The right to prefer an appeal accrues to the victim as per the proviso to section 413 of the BNSS and is not circumscribed by any conditions or qualifications as that of seeking a leave to prefer an appeal. However, the forum for



preferring an appeal is prescribed in the latter part of the proviso to section 413 of the BNSS itself, which stipulates that the appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court.

10. The contention of the petitioner that by virtue of the proviso to section 413 of the BNSS, the victim has a right of appeal against every order acquitting or even affirming an order of acquittal is not legally tenable. The proviso to section 413 of the BNSS states that the victim has the 'right to prefer an appeal' in contradistinction to a 'right to prefer appeals'. Even otherwise, the Sanhita contemplates only a right of appeal to a party only once. If the acquittal or conviction, as the case may be, is by the trial court, the right of appeal can be invoked by the aggrieved i.e; the State or the victim or the accused, as the case may be, to the next tier of appellate court. Once that remedy is invoked and the appeal is dismissed, affirming the order under challenge, the same party cannot prefer another appeal as a second appeal. The right of the victim to prefer an appeal against an order of acquittal cannot be extended to an order affirming an earlier acquittal of the accused. However, if the trial court had convicted the accused and in the appeal filed by the accused the conviction is reversed, the situation would be different. In such a scenario, the victim shall have a right of appeal against that order of acquittal. The reason is because such an order of acquittal becomes the first order of acquittal of the accused in that case. It needs to be mentioned in this context that, the appellate jurisdiction of the Supreme Court under Articles 132, 134 or even the Special Leave Petition under Article 136 of the Constitution of India stands on a different footing altogether.



11. The proposition mentioned in the preceding paragraph that the victim shall have only one right of appeal can also be culled out from a recent decision of the Supreme Court in **Asian Paints Limited v. Ram Babu** [2025 INSC 828]. In the said decision, though the Court was considering the question whether the appellant company would fall under the definition of victim, the following observations were made, which are relevant and are extracted as below:

"45. Furthermore, another aspect that needs to be considered is as to whether an appeal under the proviso to S.372 of the CrPC would be restricted only to mean an appeal to the First Appellate Court or include even an appeal to the Second Appellate Court / High Court, which happens to be the case herein.

46. We find that this is not a very complicated issue of law. We do not propose to complicate it! The language employed by the proviso to S.372 of the CrPC is unambiguous to the effect that 'the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.'(emphasis supplied)

47. From the aforesaid elucidation, it is clear that the right to appeal accrues on the 'victim' from the instance of a Court acquitting the accused. The proviso to S.372 of the CrPC is agnostic to the factum of such acquittal being by the Trial Court or the First Appellate Court. We can see the situation through another lens also. In the facts at hand, acquittal was by the First Appellate Court and not by the Trial Court. Therefore, since, in the present case, for the first time, the acquittal comes in at the stage of the First Appellate Court (being a Sessions Court), in law, the right of appeal by the victim would be to the next higher level in the judicial hierarchy, which would be the High Court. However, for that purpose, the High Court could also have been the First Appellate Court, if the Trial Court, being a Court of Sessions, had acquitted the accused. Thus, the reasoning of the High Court that if the Appellant was allowed to maintain the appeal, it would amount to an appeal as envisaged under S.378 of the CrPC, is factually and legally erroneous, which proposition we negate."



12. It is evident from the above observations itself that once the appellate remedy is invoked by the victim, the same party cannot prefer another appeal as in the form of a second appeal. Hence, after filing an appeal under section 413 of the BNSS (or under the corresponding proviso of the Cr.P.C) before the Sessions Court, another appeal cannot be preferred by the same appellant under section 419(4) of the BNSS, against the order confirming the acquittal.

13. In the result, since the defacto complainant in the instant case had already preferred an appeal to the Sessions Court against the judgment of acquittal of the accused, another appeal to this Court at his instance against the judgment of the Sessions Court is not maintainable. The defect noted by the Registry of this Court is hence sustained. The Registry shall return the certified copy of the impugned judgment to the petitioner. Considering the circumstances, the period spent by the petitioner in pursuing this special leave petition from 21-10-2025 till today, shall stand excluded for the purpose of limitation.

. Before parting, this Court places on record its deep appreciation for the splendid assistance rendered by the learned Amicus Curiae.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps